

January 13, 1992

Mr. Kevin E. Griffith  
Attorney at Law  
Porter, Wright, Morris & Arthur  
41 South High Street  
Columbus, Ohio 43215-3406

Dear Mr. Griffith:

This is in response to your letter of November 19, 1991, requesting an interpretation concerning whether the provisions of ? 199.21 authorize operators to contractually impose their Department of Transportation (DOT) drug testing requirements on all of the contractors' employees, and not just on those ? 199.3 "employees" who are working on that particular operator's contract and performing a Part 192, 193 or 195 function on that particular operator's pipeline or LNG facility.

The Part 199 drug testing regulations apply to an operator's employees and contractor employees who meet the definition of an "employee" as stated below:

**The ? 199.3 definition of "employee" means a person who performs on a pipeline or LNG facility an operating, maintenance, or emergency-response function regulated by Part 192, 193, or 195. The person may be employed by the operator, be a contractor engaged by the operator, or be employed by such a contractor.**

Section 199.21 indicates that an operator may provide by contract that the drug testing, education, and training required by Part 199 be carried out by the contractor, but the operator remains responsible for insuring compliance with the provisions of Part 199. Therefore, as was stated to you in a telephone conversation with Mr. Collaku, Part 199 requires operators to insure that their employees as well as contractor's ? 199.3 employees who are performing an operation, maintenance, or emergency-response function in the operator's pipeline which is subject to Part 192, 193, or 195 be subject to testing. The contractor's other employee are not subject to DOT drug testing.

We do not question an operator's decision to include a safety-related function in its plans or procedures for operation, maintenance, or emergency. We assume that when these plans or procedures cover a safety-related function, a Part 192, 193, or 195 rule requires that they be covered. Thus, performance on a pipeline or LNG facility of any safety-related function an operator includes in its plans or procedures for operation, maintenance, or emergency, subjects a person to drug testing under Part 199.

Thank you for your inquiry. Please let me know if you need any more information about out drug testing requirements.

Sincerely,

Richard L. Rippert  
Drug Compliance Coordinator  
Office of Pipeline Safety  
Enforcement